

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____		Application Number	Filed
		09/783,746	February 15, 2001
		First Named Inventor	
		Robert G. Stevens	
		Art Unit	Examiner
		3691	Muriel S Tinkler
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the			
<input type="checkbox"/>	applicant/inventor.	/Robyn Wagner/	
		Signature	
<input type="checkbox"/>	assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Robyn Wagner	
		Typed or printed name	
<input checked="" type="checkbox"/>	attorney or agent of record. Registration number 50575	408-973-2596	
		Telephone number	
<input type="checkbox"/>	attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34	July 16, 2011	
		Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input checked="" type="checkbox"/>	*Total of 1 forms are submitted.		

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor:	Robert G. Stevens	Examiner:	Robert G. Stevens
Application No.:	09/783,746	Art Unit:	3691
Filed:	February 15, 2001	Docket No.:	ARIBP036
Title:	SYSTEM AND METHOD FOR CREATING A SPOT MARKET		

REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the Office Action mailed March 16, 2011. The following remarks are respectfully submitted in support of Applicants' pre-appeal brief request for review filed herewith.

Claims 1, 4-16, 18-19, and 22 are pending. In the following description of the claimed subject matter, citations to paragraphs of the Specification are provided to assist in understanding the subject matter, but are not necessarily exhaustive indicators of where in the Specification a particular aspect is discussed.

The claimed subject matter of independent Claim 1 relates to a method for soliciting and receiving bids, for goods or services necessary to satisfy a spot need of a buyer. [4:17-18] A request to procure goods or services is received. [4:18-20] The request includes geographic information. [5:15-17] A database of information representing the capabilities of suppliers to deliver goods and services to geographic areas is queried. [5:8-11, 5:17-20] Those suppliers whose capabilities satisfy at least a portion of the request are automatically selected as potential bidders for an auction. [5:17-20] Each of the potential bidders is notified of an opportunity to submit a bid satisfying all or part of the purchase request. [5:3-5] An auction is conducted and

one or more winning bids is selected. [5:5-7] Independent Claims 18 and 22 recite limitations similar to Claim 1.

Claim Rejections – 35 U.S.C. §102(b)

The Examiner has rejected Claims 1, 8, 9, 10, 15, 16, 18, 19, and 22 under 35 U.S.C. §102(b) as being anticipated by Giovannoli (U.S. Patent No. 5,758,328). The rejections are respectfully traversed.

Issue 1: “conduct[ing] [an] auction” is not taught by Giovannoli.

Independent Claims 1, 18, and 22 each recite conducting an auction in which bids are electronically accepted from those potential bidders that provide one or more bids before a bidding deadline expires. On Page 6 Item 15 of the Office Action, the Examiner states the following portion of Giovannoli teaches the recited conducting of the auction:

(see fig. 2A, block 4, "The quotation system processes the request by selecting a class of vendors who sell the requested product(s) and meet the filter requirements of the buyer, vendor, and the quotation system. The quotation system then makes available the request(s) to each selected vendor via file transfer protocol (FTP) or e-mail.

Contrary to the Examiner's suggestion, no mention is made of an auction being conducted in this portion of Giovannoli. Further, Applicants have performed a text search of Giovannoli using the term, “auction,” and are unable to locate any mention of that term anywhere in Giovannoli.

Issue 2: “automatically selecting one or more winning [auction] bidders in accordance with the received [auction] bids” is not taught by Giovannoli.

Independent Claims 1, 18, and 22 each recite the automatic selection of “one or more winning [auction] bidders in accordance with the received [auction] bids.” On Page 6 Item 15 of the Office Action, the Examiner states the following portion of Giovannoli teaches the recited selecting of winning bidders:

(see fig. 2A, block 4, "The quotation system processes the request by selecting a class of vendors who sell the requested product(s) and meet the filter requirements of the buyer, vendor, and the quotation system. The quotation system then makes available the request(s) to each selected vendor via file transfer protocol (FTP) or e-mail.

Contrary to the Examiner’s suggestion, as no mention is made of an auction being conducted, necessarily no mention of the selecting of winning bidders in the auction is made in Giovannoli.

Issue 3: “query[ing] ... a database of information representing the capabilities of suppliers to deliver goods and services to geographic areas and automatically selecting as potential bidders for an auction those suppliers whose capabilities satisfy at least a portion of the request” is not taught by Giovannoli.

Independent Claims 1, 18, and 22 each recite querying a database of information “representing the capabilities of suppliers to deliver goods and services to geographic areas and automatically selecting as potential bidders for an auction those suppliers whose capabilities satisfy at least of the portion of the request.”

On Pages 5-6 Item 14 of the Office Action, the Examiner states that the following two portions of Giovannoli teach the recited querying:

“The present invention is a computerized system forming a computer based communications network for processing requests for quotation for goods and/or services by broadcasting such requests to network members of the computerized system over any conventional transmitting medium, such as the Internet, to which the computerized

system may be connected. No central database of goods, prices, etc. is involved. Instead, buyers formulate requests for quotation and transmit them to the computerized network which broadcasts the request for quotation of one or more specified standard products to prospective sellers based on filter conditions set by the buyer and/or the seller and/or the network operator. The filter compatible sellers' responses are communicated to the prospective buyer either over the communications network or via other acceptable communications means. Their responses are processed by the quotation system and submitted to the requesting buyer." [2:35-51]

"The Central Office would process RFQs through appropriate software and would wait for vendors to contact the Central Office FTP site. Vendors would use quotation system supplied software to cross reference their inventory to link with product lists used by the quotation system. When contacted the Central Office would acquire via suitable vendor software the RFQ information required and available from the vendors product database. If the vendor has prepared information relating to special sales, this information would be transferred to the Central Office at this time. Software version and list upgrades would be performed as well. When the FTP transfers are complet, the Central Office would prepare RFQ e-mail for requesting buyers and forward same as required." [4:36-49]

Contrary to the Examiner's suggestion, neither portion of Giovannoli mentions "the capabilities of suppliers to deliver goods and services to geographic areas." Necessarily, Giovannoli also thus does not mention "querying ... a database of information representing the capabilities of suppliers to deliver goods and services to geographic areas and automatically selecting as potential bidders for an auction those suppliers whose capabilities satisfy at least a portion of the request."

As Giovannoli fails to disclose three separate elements of independent Claims 1, 18, and 22, Applicants respectfully submit that the Examiner has not made out a prima facie rejection of those claims under 35 U.S.C. §102(b), and those claims are thus allowable. Claims 4-16 and 19 depend, either directly or indirectly, from one of the aforementioned independent claims and are therefore believed to be allowable for the same reasons described above.

Reconsideration of the application and allowance of all claims are respectfully requested based on the preceding remarks. If at any time the Examiner believes that an interview would be helpful, please contact the undersigned.

Respectfully submitted,

Dated: July 16, 2011

/Robyn Wagner/
Robyn Wagner
Registration No. 50,575
V 408-973-2596
F 408-973-2595

VAN PELT, YI & JAMES LLP
10050 N. Foothill Blvd., Suite 200
Cupertino, CA 95014